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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CYNTHIA M. MERKIN

Appeal 2009-007802
Application 10/027,618[1]
Technology Center 2400

Before JAY P. LUCAS, ST. JOHN COURTENAY III, and THU A. DANG, *Administrative Patent Judges.*

LUCAS, *Administrative Patent Judge.*

DECISION ON APPEAL[2]

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[1] Application filed October 22, 2001. The real party in interest is Dell Products L.P.

[2] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant appeals from a final rejection of claims 1 to 32 under authority of 35 U.S.C. § 134(a). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

We affirm the rejections.

Appellant's invention relates to an operating system independent technique for accessing and writing event log data on failure of a computer system (Spec. 1, ll. 7 to 9). In the words of Appellant:

> [W]riting data to the event log is monitored for completion. ... [M]onitoring the task for completion includes determining whether the BIOS program writes data to the event log within a configurable time period of [a] timer.

(Spec. 12, ll. 9 to 12).

> [I]f [a] system controller determines that the execution of the BIOS did not result in the writing of the data to the event log before expiration of a time period established by [a] timer then the system controller responds to the event. For example, if the execution of the BIOS program causes the second failure described earlier then the BIOS program would not be able to be completed, e.g., would be unable to write data to the event log before expiration of the timer. The system controller responds by reading data describing the event and subsequently writing data to an event log.

(Spec. 13, ll. 18 to 25).

The following claim is illustrative of the claims on appeal:

Claim 1:

> 1. In a system management controller included in a computer system, a method of accessing event data describing a failure, the method comprising:
>
> configuring the system management controller to monitor a task of writing data to an event log, the task being executed by a Basic Input Output System (BIOS) program in response to the failure;
>
> monitoring the task for completion;
>
> accessing the event data if the task fails to complete; and,
>
> writing the event log via the system management controller in response to accessing the event data.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Davis	US 6,205,547 B1	Mar. 20, 2001
Kosugi	US 2001/0044841 A1	Nov. 22, 2001 (filed Jan. 22, 2001)

REJECTIONS

The Examiner rejects the claims as follows:

R1: Claims 1 and 3 to 17 and 22 to 32 stand rejected under 35 U.S.C. § 102(e) for being anticipated by Kosugi.

R2: Claims 2, 18, 19, and 21 stand rejected under 35 U.S.C. § 103(a) for being obvious over Kosugi in view of Davis.

We have only considered those arguments that Appellant actually raised in the Brief. Arguments that Appellant could have made but chose not to make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUES

The issues are whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. §§ 102(e) and 103(a). The § 102(e) issue is whether the Kosugi reference teaches Appellant's "system management controller" of claim 1. Specifically, the § 102(e) issue is whether Kosugi's controller is "monitoring" within the computer system experiencing a failure. The § 103(a) issue turns on whether the Examiner provided a legally sufficient justification for combining Kosugi and Davis.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

Disclosure

1. Appellant has invented a method and system of accessing and writing event data describing a failure when booting a computer (Spec. 4, ll. 5 to 9 and 9, ll. 13 to 15). Appellant's method includes a controller that monitors writing data to an event log, accessing the event data if the task of writing data fails to complete, and writing the event log via the controller in response to accessing the event data. (*See* claim 1.) The Specification says a computer system may be a server machine (Spec. 10, ll. 1 to 2).

Kosugi

2. The Kosugi reference discloses accessing event data describing a trouble during the BOOT processing of a server machine's operating system. (*See* Abstract and ¶ [0029].) Kosugi further discloses a controller 88 that monitors writing data to an event log, accessing the event data if the writing of data fails to complete, monitoring the task for completion, accessing the event data if the task fails to complete, and writing the event log via the controller in response to accessing the event data (¶ [0030]). Kosugi's event log is written in an email attachment forwarded to a remote server via a LAN module (*id.*). However, if the LAN module fails (or also if it does not fail), the WAN module is still available to notify the remote maintenance server of operating system trouble via a public telephone network (*id.*).

Davis

3. The Davis reference discloses system interrupts (col. 4, ll. 12 to 37).

PRINCIPLE OF LAW

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

ANALYSIS

Arguments with respect to the rejection of claims 1, 3 to 17, and 22 to 32 under 35 U.S.C. § 102(e) [R1]

The Examiner has rejected the noted claims for being anticipated by Kosugi, as expressed in the Answer, pages 3 to 9.

Appellant argues that the "system management controller" of claim 1 monitors within the system where event data is generated, and not merely within the system logging event data (Brief 5). In other words, system monitoring must be internal to the computer experiencing a failure (*id.*).

Although we read no limitations from the Specification into the claim language, we read the claims in light of the Specification. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). Here, the Specification discloses that Appellant's computer system may be a server (FF#1). We thus read the "system" of claim 1 as being a server. Within Kosugi's server (*i.e.*, the "system," as claimed), a controller 88 (cited as Appellant's claimed "system management controller") records trouble in the operating system, and a local area network (LAN) sends the system log describing the trouble in an email attachment to a remote site. (*See* FF#2.) Since Kosugi discloses

that the trouble occurs within the server machine's operating system (*id.*), we find unconvincing Appellant's argument that the claimed "controller" is not within the system generating event data. Kosugi's disclosure of a remote monitoring station that receives the logged information does not alter our view that Kosugi's controller 88 is can be read on the claimed "system management controller." We thus find no error with the Examiner's rejection of claim 1.

Argument with respect to the rejection of claims 2, 18, 19, and 21 under 35 U.S.C. § 103(a) [R2]

The Examiner has rejected the noted claims for being obvious over Kosugi in view of Davis, as expressed in the Answer, pages 8 to 9.

Appellant appears to argue that the justification for combining the Kosugi and Davis references is legally insufficient (Brief 6 to 8). Specifically, a skilled artisan would not have started with Kosugi's trouble notification in booting a computer (FF#2) and then considered Davis's disclosure of system interrupts (FF#3) in order to make the claimed invention (*id.*). However, we find that the Examiner articulates a reason for combining the Kosugi and Davis disclosures having a rational underpinning. *See KSR Int'l v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Specifically, the Examiner finds that the skilled artisan would have considered Davis's interrupts because they are well-known indicators of error detection when booting up a computer. (*See* Ans. 9, top.) We adopt and endorse the Examiner's findings and stated rationale. Moreover, we find unpersuasive Appellant's mere allegations of patentability, such as those presented in the

Brief, pages 6 to 8. (*See* 37 C.F.R. § 41.37(c)(1)(vii).) Accordingly, we find no error.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellant has not shown that the Examiner erred in rejecting claims 1 to 32.

DECISION

We affirm the Examiner's rejections [R1 and R2] of claims 1 to 32.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

peb

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